Scott. 11-37—50,005—27-10-41.

Home (1942) Department.

M2 SERIES.

p. 12(K)

G.O. No. 1713

Dated 14/5/42

[Despatch Abstract.]

CRIMINAL APPEAL - APPEAL AGAINST ACQUITTAL - C.A.NOS.47 AND 49 OF 1941 ON THE FILE OF THE SESSIONS JUDGE, BELLARY - D E C L I N E D.

UNDER SECRETARY TO GOVERNMENT
19 APR 1942
HOME DEPT.

SECRETARY TO GOVERNMENT
21 APR 1942
HOME DEPARTMENT

280(c) F
20.4.42

From

I.M.Fraser Esquire, I.C.S.,

District Magistrate,

Bellary.

The Secretary to Government,

Home Department,

Madras.

Roc.No.223/42 Dated 14-4-1942.

Sir,

Sub: Criminal Justice-Bellary District-C.A.Nos.47 and 49 of 1941 on the file of the Sessions Judge, -- Bellary-Order of acquittal-Revision under Section 417 Cr.P.C.

I forward copies of(1) the judgment in C.A.Nos. 47 and 49 of 1941 on the file of the Sessions Judge,Bellary, (2) the letter No.410/Gen./42 dated 23-2-42 from the Deputy Inspector General of Police,Bellary and (3) the opinion of the Public Prosecutor,Bellary. The appellants ~~to~~ 1 to 5 were convicted by the Joint Magistrate,Hospet under Section 160 I.P.C. in his C.C.No.170/1940. On appeal the Sessions Judge,Bellary,reversed the conviction and sentence of the lower Court. He observes that A-1 pressed a private complaint before the Sub-Magistrate against As 2 to 5 under Section 355 and 504 I.P.C. and that A-2 filed a counter-complaint alleging thatA-1 had slapped him on the cheek He adds that the Stationary Sub Magistrate should have tried the cases simultaneously instead of trying the case of affray first and making a reference to the learned Joint Magistrate under Section 349 Cr.P.C., after expressing his opinion that the accused should be bound over under Section 106 Cr.P.C. to keep the peace.

The charge under Section 160 I.P.C. by the police had no connection at all with the private complaints of parties which they may or may not press to a conclusion. A conviction under Section 160 I.P.C. on a prosecution instituted by the Police would be no bar to a subsequent trial under Section 323 I.P.C. on the complaints laid by the parties. The Sessions Judged in my opinion erred in Law in giving such a decision. I request that the ------

the Local Government may be pleased to initiate an appeal in this case under Section 417 Cr.P.C.,

AK/14.4.

District Magistrate.

3/

Copy of letter No.410/Genl/42 dated 23.2.42 of the Deputy Inspector General of Police, Bellary to the Dt. Magistrate, Bellary.

...

Sub: PETITION UNDER SECTION 417 Cr.P.C. for an appeal against the acquittal of the accused in C-A Nos.47 and 49 of 1941 dated 17-12-41 on the file of the Sessions Judge, Bellary.

...

Rex Vs	Appellants	C-A 47/41	C-A 49/41
		1.G. Venkobanna (1st accused)	1. Seshagiri Chetty 2. A. Venkanna 3. C. Bheemappa 4. C. Venkobanna Chetty (Accused 2 to 5).

The appellants mentioned above were convicted under section 160 I.P.C. for fighting in the public street near the temple car in the main bazar and disturbing the public peace in Narayanadevarakeri and sentenced to pay a fine of Rs.51/- to A-1 and the rest to a fine of Rs.10/- each by the Joint Magistrate, Hospet in his C.C. No.170/1940. The learned Sessions Judge on appeal reversed the conviction and sentence of the Lower Court on the following erroneous interpretation of Law and misappreciation of evidence. The learned Sessions Judge has begun his judgment by saying that the arguments revealed a regrettable magisterial muddle that A-1 pressed a private complaint before the Sub Magistrate against A-2 to A-5 under Sections 355 and 504 I.P.C. alleging that A-2 to A-4 had beaten him with shoes and that he had done nothing; that A-2 filed a counter complaint alleging that A-1 had slapped him on the cheek; that instead of hearing all these three cases together and giving them a simultaneous disposal the Sub Magistrate tried this case of affray first and found the accused guilty and made a reference to the learned Joint Magistrate under Section 349 expressing his opinion that the accused should be bound over under Section 106 Cr.P.C. to keep peace; that in any event action under section 106 Cr.P.C. was dropped by the Joint Magistrate. The learned Sessions Judge further observes that the learned Joint Magistrate while observing that the evidence of the solitary witness examined was inadequate held however that it was sufficient to justify a conviction under the affray section. The learned Sessions Judge further observes that he had carefully considered whether in this case there should be a retrial along with the other two complaints and that he did not think that such a course was necessary or desirable, the parties having been sufficiently punished by being brought to court in so many matters and

arising out of this one transaction; th t it was sufficient if the two complaints pending now took their course and the convictions and sententes of all the appellants were set aside.

The acquittal of the accused in this case by the learned Sessions Judge, for the reasons given above; is clearly contrary to Law weight of evidence and the probabilities of the case.

The essence of an affray consists not only in the publicity of the place but also in the disturbance of the public peace. The offence of affray, in a legal sense, is a public offenc to the - terror of the people and this has nothing to do with the complaints of private parties; who may choose to compromise afterwards and defeat and escape the punishment for affray. An offence under affray is different from those under hurt etc., and a conviction for the latter offence cannot be converted in appeal into a conviction to the former; as held in 18 L.W.741. Again in 23 A.L.J.8, it was laid down that previous trial and conviction for an offence under 160 I.P.C. is no bar to the subsequent trial and conviction for an offence under Sec: 323 I.P.C. Again in 1929 Bombay 161; when the complainant and the accused were both tried and convicted under section 160 I.P.C. the complainant lodged a complaint against - - accused under sections 323; the second trial was permitted. The same view was held in 47 All. 284.

Thus the position of Law is very clear that conviction under section 160 I.P.C. on a prosecution instituted by the police, would be no bar to a subsequent trial under Section 323 I.P.C. on the - complaints laid by the parties.

The learned Sessions Judge is clearly wrong in saying that th Joint Magistrate was alive to the possibilities of parties to an affray colluding in private complaints with allegations differing from the police charge-sheets to escape a conviction; but th t it is not so here in view of the really inadmissible evidence of the Sub I spector.

The Sub Inspector's testimony has nothing to do with the question of beating because the Sub Inspector spoke to the events subsequent to the offence for an action under 106 Cr.P.C. He - - deposed nothing about the offence.

The learned Judge was wrong in saying that the acceptance of evidence of the constable may prejudice the pending complaint. But the rejection of evidence implied in the judgment will have an - - equally prejudicial effect and any way both the parties have necessarily to examine the constable; and this will not in any manner affect the case of affray.

The learned Judge erred in saying that there was only the evidence of the constable. But he failed to appreciate that there was the admission made by both the parties that they were fighting in the public street disturbing the public peace. This is discussed in the judgment of the Joint Magistrate in the concluding paragraph.

The learned Judge is clearly wrong when he says that action under 103 Cr.P.C. can only be based on the materials relating to the actual offence committed. But for binding over the parties under 106 Cr.P.C. the nature of the quarrel; the seriousness of it; the persons involved; the likelihood of its continuance the light of what had occurred in the past and the present; are the necessary ingredients and the Sub Inspector has given his testimony only for an action under 106 Cr.P.C. If the view taken by the learned judge was correct action under Section 106 Cr.P.C. would not be workable at all.

The learned Sessions Judge is wrong when he observed in the last para of his judgment that it is sufficient if the two complaint pending now take their course and that he considered the question of retrial of the case under affray and held that it was unnecessary When he thought that he considered the question of retrial he should have found that there was evidence; and when he found the e[illegible] evidence, there was no reasons for a reversal of conviction. The Police have nothing to do with the complaints of private parties and the impropriety of convicting the case of affray ahead of the other private complaints, is no legal defect as pointed out in the various/High Courts. The consideration of the learned Judge, that the parties had been sufficiently punished by being brought to court is no reason to acquit the accused.

As the Judgment of the learned Sessions Judge has evolved

evolved questions of Law and has put the police in a dilemma in regard to the charges under Affray; when the parties may rush to courts with private complaints to defeat the ends of justice and public tranquility, this is a fit case to be taken to the Hi Court.

The District Magistrate may therefore be pleased to move the Government to direct the public prosecutor to prefer an appeal to the High Court in this case.

True copy

r Collector.

OPINION OF THE PUBLIC PROSECUTOR, BELLARY dated 20th February 1942.

The Learned Judge clearly erred in Law in giving the decision he did in spite of my pointing out that the charge under 1 C I.P C by the Police had nothing to do with the private complaints of parties which they may or may not press to conclusion. Bet er the High Court is approached in the matter.

...

Home Dept.

21/28-4

Gen. No. 280(c) F-1 M 27-4-42

Criminal appeal - Appeal against acquittal - C.A. Nos. 47 and 499/1941 on the file of the Sessions Judge, Bellary from the D.M., Bellary, Roc No. 223/42 dt 14.4.42

Referred to the P.P., Madras, for his opinion as to whether an appeal against the acquittal of the accused in the case cited above is likely to be successful.

The reply to this reference should be sent before 10.5.42

To
The P.P., Madras.
(with C/f of the relet.)

P.T.O. for alternative draft.

12

GOVERNMENT OF MADRAS

Home Dept. I. 4—306—23-12-36.

ASSISTANT SECRETARY TO GOVERNMENT 18 MAY 1942 MADRAS

11/14/5 C/15.

Received _____ 193 . *Registered* _____ 193 .

Criminal appeal – **Appeal against acquittal—~~Negatived.~~** C. A. Nos.

~~Case~~ No. 47 and 49 of 1941 on the file of the Sessions Judge, Bellary – Decided.

HOME DEPARTMENT.

READ—the following papers :—

280(0)7. From the District Magistrate, Bellary Roc No. 223/42, dated 14.4.1942 ~~1941~~ 2 ~~43~~ 1 ~~2~~ 1.

Endorsement to the Public Prosecutor, Madras, No. 280(0) 7-1, dated 27.4.1942 ~~1941~~ 2.

From the Public Prosecutor, Madras, O/m No. 17/42, dated 5.5.1942 ~~1941~~ 2.

ORDER—Mis. No. 1737, dated 14/5/1942 ~~1941~~ 2.

The Government do not consider it advisable to appeal to the High Court against the judgment of the Sessions Judge Bellary acquitting the accused in C.A. Nos. 47 and 49 of 1941 on his file.

2/. The D.M. has not observed the instructions in Home Dept. memo. no. 17651 7-2 dt 12-7-41. (X)

(True Extract.)

O/C

11.5.42 P&SC 11.5.42

G 14/5

Secretary to Government.

To

Std with exhs mad 16/5

The District Magistrate, Bellary (encls 1 to 7 of 7)

The Public Prosecutor, Madras. ✓

Home Dept

21/28-4

Gradation No. 280(0) F-1 Dt 27-4-42

Criminal appeal - Appeal against acquittal - C.A. Nos. 47 and 497/1941 on the file of the Sessions Judge, Bellary from the D.M., Bellary, Roc No. 223/42 dt 14.4.42

Referred to the P.P., Madras, for his opinion as to whether an appeal against the acquittal of the accused in this case cited above is likely to be successful.

The reply to this reference should be sent before 10.5.42

To
The P.P., Madras.
(with ref to the relet.)

To be sent to Place where he is at present

Accepted with enclosures
MK
115.

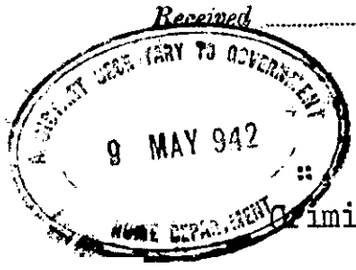
P.T.O. for alternative draft.

7:- 1000(0) 11.5.42 C.F. 80.

13

JUDICIAL **DEPARTMENT.**

Received ..... 19 . *Registered* ..... 19 .



Subject.

Criminal appeal - Appeal against acquittal - C.A.Nos. 47 and 49 of 1941 on the file of the Sessions Judge, Bellary - Home Department Endorsement No. 280 (O) F-1, dated 27-4-42

Forwarding Opinion.

ENCLOSURES.

No. .....

.....

Spare copies .....

Opinion No. 17/42

Station Coimbatore, *Dated the* 6th May 1942.

From (Name) V.L. Ethiraj Esquire, Barrister-at-Law,

(Designation) Madras Public Prosecutor.

To The Secretary to the Government of Madras,

HOME Department.

Sir,

p 11 ante - p 14 infra

With reference to Endorsement No.280(O) F-1, Home, dated 27th April 1942, I have the honour to forward herewith my opinion in the matter.

The papers received for reference are herewith returned.

I have the honour to be,
Sir,
Your most obedient servant,

V.L. Ethiraj

Public Prosecutor.

CPAN/5-5.

P.T.O

14

O P I N I O N.

In this case Accused 1 filed a complaint of assault against A2 to 5 and the latter in turn complained against A1. The Police charge-sheeted the accused under Section 160 I.P.C. The Sub Magistrate convicted all the accused in the affray case and referred it to Joint Magistrate under Section 349 Cr.P.C. as he considered action under Section 106 Cr.P.C.necessary. The Joint Magistrate convicted accused 1 and sentenced him to pay a fine of Rs.51/- in default to undergo simple imprisonment for one week while accused 2 to 5 were sentenced to pay a fine of Rs.10/- in default to undergo simple imprisonment for 5 days each. The cases filed by the accused against each other are pending. All the accused appealed to the Sessions Court of Bellary and the learned Sessions Judge held that the Sub Magistrate ought to have tried the case and the counter case filed by the accused along with the affray case and that the Sub Magistrate acted illegally in the procedure adopted for considering an order under Section 106 Cr.P.C. is necessary. The Sessions Judge acquitted the accused and did not think it necessary to order a retrial as the complaint by Accused 1 against Accused 2 to 5 and by the Second accused against accused 1 are pending disposal. The High Court will be very slow in interfering with the discretion of the Sessions Judge in a petty case like this. I am therefore of opinion that an appeal against the acquittal is not likely to be successful.

Coimbatore,
5th May 1942.

Public Prosecutor.

CPAN/5-5.

Home Dept.

Criminal appeal - Appeal against acquittal
C. A. Nos. 47 and 49 of 1941 on the file of the
Sessions Judge Bellary.

p1-2 cf — From the D. M., Bellary, Rc. No. 223/42 dt. 14.4.42

With reference to the D.M.'s proposal in the
cf. it is submitted that the 3 months period
within which normally appeals against
acquittals should be filed has expired in this
case on 16.3.42. The six months period expires
on 16.6.42. This only in exceptional cases and
on p2 ng 690 cf for very special reasons to be recorded, that this
24.6.21 3 months period could be validly extended. The
case in question does not appear to be a very
important one. But the D.I. of Police has stated that
the judgment in question has evolved questions of
law. In the circumstances it is for orders whether
the opinion of the P.P., Madras, as to whether an
appeal against acquittal is likely to be successful
should be invited or whether an appeal may be
declined as proposals were not received in time.
Two alternative drafts are submitted for consideration
in ~~pp 22/5~~ the D.M.'s Cr. No. 1763/42 dt. 19.12.42 dt. 4.1.43. His attention may
be drawn to this.

G
24/4. 6
22/4/42

JS. Post
22.4.42

The S.J. allowed the appeal holding
the trial in the case by the S.M.
irregular for two reasons
viz.

(1) The police charge sheet and
the two private complaints
should never been heard and

and despond of [illegible] but this view is
not supported by any authority. Acquittal
under S. 160 Cr.P.C. is by no means a bar
to subsequent trials of the private complaints.
(2). Inadmissibility of the S.D.'s evidence. This
has not been referred to either by the Dist. and Sessions
Judge. The conviction under S. 106 Cr.P.C. is not based
upon the S.D.'s evidence. In fact the S.D. did not
speak at all about the theft. He was apparently
examined by the S.I. only in connection with
the question of handing over the property and
not in connection with the theft. But the question whether the
accused is liable for conviction under S. 106 Cr.P.C. The
S.D.'s did not take any action under S. 106 Cr.P.C.
and the evidence of the S.D. was thus not
acted upon.

Altho' this is not an important case there
are questions of law involved. We may
get the opinion of the P.P.

24/4

Issued as Roc. No. 280 (C) dt. 27.4.42. p11 C
From the P.P., Madras, Opn. no. 17/42 dt. 5.5.42. pp13-14 C
The P.P., Madras is of the opinion that an appeal
against acquittal is not likely to be successful. p14 C.
The draft order on p12 C. is for approval.

11-5-42

11-5-42

12/5

A.S.

MAY 12 1942

JOINT SECRETARY

Manuscript

29/5/42